As if I-9 Compliance Wasn't Confusing Enough: How To Avoid Traps of New Federal Security Features

Hiring managers know that in order to legally utilize immigrant workers, they must accurately complete an Employment Eligibility Verification Form I-9. But, there's a redesigned federal document that is leading to confusion as businesses try to comply with the law.

The U.S. Citizenship and Immigration Services (USCIS) is rolling out its redesigned Form I-766 Employment Authorization Card (commonly known to employers as an "EAD"). It has enhanced features to strengthen security and deter fraud. The agency began issuing the new EADs in late October and anticipates that more than 1 million people in the U.S. will receive the new documents within the next year.

Employers are still required to accept an unexpired EAD as a valid List A document for Form I-9 purposes in the hiring and, if applicable, the re-verification process for employees. List A documents establish both a worker's identity and employment authorization for work in the United States. The newly-redesigned EAD incorporates many of the design changes seen in the Form I-551 Permanent Resident Card (commonly known as the "Green Card") that was similarly redesigned in May, 2010.

Employment Authorization Card

Permanent Resident Card



Comparing the new EAD with the Green Card readily shows the similarities between the documents. Before the redesign, the two cards looked very different.

How Does The New EAD Affect Employers?

1. Don't confuse the two new documents.

The primary concern for employers is that the person completing Section 2 of the Form I-9 needs to be sure to differentiate between the two new cards, and record properly the document title, issuing authority, document number and expiration date in the appropriate places on Form I-9.

2. Don't confuse the document numbers on a new EAD.

The document number on an EAD is a long number beginning with three letters such as "WAC", "LIN", "SRC" or other similar letters. The new EAD cards may also contain a USCIS Alien number (known as an "A-Number"), if the foreign national has one assigned to him or her. The A Number should not be recorded as the document number in List A. On the other hand, for a legal permanent resident the correct document number to record in List A is the employee's A Number, which is the only document number listed on the card.

3. Don't demand to see a specific document version.

Any applicant for employment may still present an unexpired version of the old EAD card to satisfy Form I-9 document verification requirements. The new card is being provided to individuals when they apply to the USCIS for renewal or replacement; all previously-issued EADs will remain valid until the expiration date printed on the card.

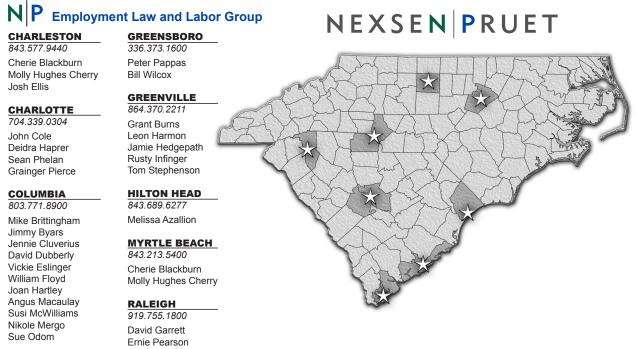
4. Don't demand to see specific documents.

A common misunderstanding is that an employer must examine a worker's Green Card if they indicate they are a legal permanent resident in Section 1, or an EAD if the employee has indicated he or she is an alien authorized to work. This is not true. In order to avoid allegations of discrimination in the Form I-9 process, the sacrosanct rule is that the employee has the choice of what documents to present for the employer's completion of Section 2. A permanent resident may present a valid driver's license and an unrestricted Social Security card for the completion of Section 2. Although rare, in some cases a foreign worker with an EAD may present the same. If so, the employer must accept the worker's attestation of their EAD's expiration date and re-verify on that date without examining the EAD.

5. Re-verify EADs but not Green Cards.

After properly recording the expiration date in Section 2, if the employee has presented an EAD as a List A document, the employer must be certain to re-verify the worker's employment authorization on the expiration date using either Section 3 or a new Form I-9. There is no "grace period" for employment after an EAD's expiration date. When an employee presents a Green Card, however, the employer should never attempt to re-verify a Green Card.

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